



Office of the Attorney General
State of Texas

July 20, 1993

DAN MORALES
ATTORNEY GENERAL

Mr. Butch Dempsey
Chief Investigator
Cedar Park Police Department
1400 Whitestone Boulevard
Cedar Park, Texas 78613

OR93-467

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 19066.

The City of Cedar Park (the "city") has received a request for certain city police department records. Specifically, the requestor seeks copies of an offense report involving an incident of alleged aggravated sexual assault of two children. You advise us that the case was determined to be "unfounded due to insufficient evidence." You have submitted the requested information to us for review and claim that it is excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with the defendant's privacy rights.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." We note first that some of the requested information--specifically, a letter to the city police department from the Texas Department of Human Services Children's Protective Services--appears to be governed by chapter 34 of the Family Code. Section 34.08(a) of the Family Code provides:

Except as provided in Subsections (b) and (c) of this section, the reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

Subsections (b) and (c) of this section provide for review of such information by an adoptive parent of a child and by an adult who as a child was the subject of a child abuse investigation, and are thus not applicable here. As you do not indicate whether the city has promulgated any regulations under section 34.08 providing for the dissemination of reports involving child abuse to the general public, and as we are unaware of any such

provisions, we presume that none exist. Thus, the letter from the Texas Department of Human Services Children's Protective Services must be excepted from required public disclosure by section 3(a)(1) of the Open Records Act in conjunction with chapter 34 of the Family Code. See Open Records Decision Nos. 587 (1991) (availability of chapter 34 investigation records when contained in Department of Human Services licensing files); 440 (1986) (availability of chapter 34 investigation records when contained in city police department's investigation files).

Information may also be withheld under section 3(a)(1) of the Open Records Act if it meets the criteria articulated for common-law privacy by the Texas Supreme Court in *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing *and* is of no legitimate concern to the public.

Here, we need to consider the privacy interests of both the alleged victims and the defendant. In Open Records Decision No. 393 (1983), this office held that "the information which either identifies or would tend to identify the victim [of sexual assault] may be withheld under the common law right of privacy." See also Open Records Decision No. 339 (1982). In this instance, however, the mother of the child at issue seeks the information. Section 3B of the Open Records Act provides for a special right of access to confidential information. It states, in pertinent part:

A person or the authorized representative of a person has, beyond the right of the general public, a special right of access to and to copies of any records held by a governmental body that contain information relating to the person that is protected from public disclosure by laws intended to protect that person's privacy interests.

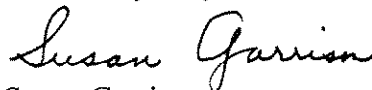
V.T.C.S. art. 6252-17a, § 3B(a). A mother is the authorized representative of her minor child. See Fam. Code §12.04 (granting parent "the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child"). She therefore has a special right of access on behalf of her child to information concerning her child which would otherwise be protected from required public disclosure in deference to the child's privacy interests. See generally Open Records Decision No. 542 (1990).

Finally, we conclude that some of the requested information relating to the defendant is intimate or embarrassing. However, we also conclude that the public has a legitimate interest in knowing why the police determined the allegations of sexual assault to be unfounded. We note as well that the identity of a defendant in criminal proceedings is information specifically made public in *Houston Chronicle Publishing Co. v. City of*

Houston, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.], *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). *See also* Open Records Decision No. 127 (1976). We conclude therefore that information concerning the defendant is not protected by common-law privacy and may not be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. The requested information, except as noted above, must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Susan Garrison
Assistant Attorney General
Open Government Section

SG/GCK/jmn

Ref.: ID# 19066
ID# 19442

cc: Ms. Delia Rupp
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